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April 17, 2006

Michael B. Day

Richard Clark, Director  
Consumer Protection and Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, Ca 94102

**Re:   Comments of CTIA-The Wireless Association® on Workshop  
      Regarding CPSD Slamming Citation Proposal**

Dear Mr. Clark:

In accord with the schedule set forth in the March 30, 2006, letter of Executive Director Larson noticing an informal workshop on the proposed slamming citation program, CTIA-The Wireless Association® ("CTIA") hereby provides these comments on Draft Resolution UEB-001, *Adoption of Citation Program for Enforcing Compliance with Public Utilities Code Section 2889.5*, released by the Consumer Protection and Safety Division ("CPSD") on April 7, 2006, as well as related matters raised at the informal workshop held on April 11, 2006. In doing so, CTIA would note that slamming is not a practice associated with the provision of wireless phone service. Accordingly, CTIA's interest in CPSD's proposal does not pertain to its direct impact on the wireless industry. Rather, it is CTIA's belief that the procedures established by the slamming citation proposal may serve as a model for future enhanced enforcement efforts undertaken by the Commission. Accordingly CTIA wishes to ensure that the due process rights of carriers are protected, while ensuring effective enforcement of the citation program.

**Introduction**

In Decision 06-03-013, the Commission determined that its lengthy OII process is insufficient to respond to carriers that fail to comply with laws governing verification of consumers' intent to switch to a new *telecommunications* carrier. To this end, the Commission noted the potential use of its citation forfeiture program which it has utilized in the area of regulated transporters<sup>1</sup> and directed the CPSD to investigate the use of a similar program for violations of slamming statutes. Specifically, the Commission directed:

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<sup>1</sup> Under this procedure a carrier is cited for violations of applicable law. The carrier is then given the option of contesting the charges and requesting a formal hearing, or paying a fine.

This examination should include opportunities for industry and consumer input. If such a program is deemed effective for enforcement of the Commission's slamming rules, Commission staff shall bring forward a detailed proposal for a citation forfeiture program for the Commission's consideration. The proposed citation program must include adequate protections of carriers' due process rights and specifically must provide carriers' the opportunity to appeal a citation.<sup>2</sup>

In response to these directives, CPSD circulated a draft resolution setting forth its proposal for adoption of a citation program for enforcing compliance with Public Utilities Code Section 2889.5 and convened a workshop to discuss its proposal with industry and consumer interests. CTIA participated in the workshop and is submitting these comments in response to CPSD's (in conjunction with the Executive Director's) invitation to do such.

## **Comments on Draft Resolution**

### **A. Pre-Citation Procedures**

Throughout the Consumer Bill of Rights Proceeding (R.00-02-004), CTIA has advocated that the Commission Staff should first work cooperatively with the carriers to understand, and then resolve, any consumer issues. This premise must be applied to the slamming citation program as well. The Draft Resolution goes part way towards reflecting such ideal. Specifically, Paragraph 2 provides that:

Prior to issuing a citation, CPSD should inform the telecommunications provider that a citation will be issued and the basis therefore. If after investigation, CPSD finds violations of paragraph 1.a. or 1.b. (above), CPSD is hereby authorized to issue a citation and levy a \$500 - \$1000 fine consistent with the requirements set forth in Public Utilities Code Section 2107.

As currently drafted, the language of Paragraph 2 *implies* that, as part of its investigation, the CPSD will contact the carrier and seek to ascertain all relevant facts prior to proceeding to citation issuance. Indeed, this was the topic of a great deal of discussion at the April 11 Workshop. Carriers were assured by CPSD that there would be an "opportunity for dialog" prior to citation issuance. This opportunity for dialog is critical to avoid the issuance of unwarranted citations. Paragraph 2 must be revised to reflect that CPSD will contact the carrier at the initial stages of its investigation into the alleged slamming violation and provide the carrier the opportunity to provide any and all information relevant to the allegation so that such information can be factored into the CPSD's determination as to whether to issue a citation.

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<sup>2</sup> Decision 06-03-013, *mimeo*, at pp. 109-110.

## **B. Revocation of Authority**

Paragraph 8 of the draft resolution addresses a carrier who fails to pay the fine set forth in the citation. In this respect, the resolution states that “CPSD may take action to have the Commission revoke the respondent’s authority....” As with the issuance of the citation, prior to taking action to have the Commission revoke the carrier’s authority, there should be some obligation imposed on the CPSD to converse with the carrier and ascertain its reason for noncompliance with the citation and if such noncompliance can be readily remedied.

In addition, the language of Paragraph 8 must be crafted such that CPSD stays within its authority and does not attempt to independently act in areas left to the purview of the Commission. For example, currently, the language reads that “CPSD.....may take any other action provided by law to recover unpaid fines and ensure compliance with applicable statutes and regulation, *including ordering the billing telephone company or companies that are providing billing and collection services to cease billing and collection services for the respondent pursuant to Public Utilities Code Section 2889.9(f).*” CTIA would note that the consequences of Section 2889.9(f) can only be imposed on a carrier by way of Commission order, not by directive of the CPSD. In addition, the statute applies to incidences where there is failure by the carrier to respond to a Commission Staff request for information, not in an incident of failure to pay a fine. Finally, CTIA would note that Section 2889.9(f) is contained in a statute which addresses cramming of telecommunications services, not slamming. The Commission must be wary of mixing and matching violations and remedies. A remedy which was enacted by the legislature after careful deliberation that it was an appropriate cure to a specific violation, should not be applied out of its respective context and used to address the violation of another statute/regulation without careful and thorough evaluation.

## **Comments on Other Workshop Topics**

At the workshop, the issue of whether to make citations public, through posting on the Commission’s website was raised. Prior to taking such a step, the Commission must clearly delineate the objective behind such a posting, how it intends to design the posting to meet that objective, and how it will measure whether that objective has been met. Having done that, the Commission must then determine whether the “benefits” of such postings (e.g., acting as a deterrent to future slamming violations, informing consumers of bad actors) out weigh the costs (e.g., harm to the competitive market place, impinging on carriers’ due process rights).

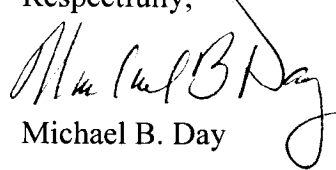
At this juncture, CTIA believes it premature for the Commission to determine whether slamming citations should be posted on the Commission’s website. As far as CTIA is aware, the approximately 15 minutes of discussion at the April 11<sup>th</sup> workshop is the totality of industry and consumer input to date on this subject. This is not sufficient. The issue needs a more thoroughly vetting prior to Commission determination. In this respect CTIA would submit that prior to the Commission proceeding with any further consideration of this matter, it should take a step back and look at this issue in the context of the entirety of other similar forms of information the

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Commission may be considering posting on its website.<sup>3</sup> It should then issue a ruling setting forth a precise proposal (e.g., exact information which would be posted, timing of posting, period of time posting would stay on website, carrier opportunity to review information prior to posting) and request comment thereon. In addition, a workshop forum can be used to more thoroughly vet the proposal. Only after such process is undertaken will the Commission have the information necessary to determine whether postings on its website of information such as slamming citations is truly in the public interest.

If you have questions on the comments set forth above, please contact me at 415-392-7900.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael B. Day", with a stylized flourish at the end.

Michael B. Day

Counsel for CTIA-The Wireless  
Association®

cc: Commissioner Rachelle Chong (*via hand delivery*)  
Linda Woods, CPSD (*via hand delivery*)  
Service List, R. 00-02-004 (*via e-mail*)

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<sup>3</sup> For example, at the April 11<sup>th</sup> Workshop it was briefly discussed that the Commission is considering posting items such as complaint information on its website as well.